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LVT 9

Our Ref: M/EH 2456c

MIDLAND RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER S21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Mr & Mrs Perfit
Respondent: Mr Z Ali
Re: 22 Berwick Grove, Great Barr, Birmingham, B43 7QB
Date of Tenants Notice: 15th November 2001
RV as at 1.4.73: £231.00
Application dated: 20/5/02
Heard at: The Panel Office
On: 10/10/02

APPEARANCES:

For the Tenant: Mr Joe Moore – Midland Valuations

For the Landlord: Mr Zulfikar Ali

Members of the Leasehold Valuation Tribunal:

Mr R T Brown (Chairman)
Mr J H Dove
Mr D Underhill

Date of Tribunals decision: 28 OCT 2002

REFERENCE M\EH2456C & M\LRC416

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

MIDLAND RENT ASSESSMENT PANEL

DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL

IN RESPECT OF

ZULFIKAR ALI -v- B & D PERFIT

22 BERWICK GROVE GREAT BARR BIRMINGHAM B43 7QB

These cases follow applications by Mr Joe Moore of Midland Valuations on behalf of the Lessees Mr Brian and Mrs Doris Perfit both dated the 20th May 2002 for a determination of the price to be paid under Section 9 (1) of the Leasehold Reform Act 1967 and for a determination of the costs to be paid under Section 9(4) of the Leasehold Reform Act 1967 (as amended) (“the Act”)

The Lease dated 25th March 1963 is for a term of 99 years from the 25th day of March 1959 at an annual ground rent of £17.

The Lessees Notice of Claim to purchase the freehold is dated the 15th November 2001 when there were approximately 56 years remaining on the Lease.

The Tribunal inspected the property on the 10th October 2002 in the presence of the Lessees.

THE PROPERTY

The property comprises a semi-detached house constructed in the late 1950s in traditional materials. The centrally heated, double glazed accommodation is as follows: Ground floor; hall, living room, kitchen (fully fitted) First floor; one single and two double bedrooms, bathroom (bath, wash basin and bidet) separate WC. Integral garage. Outside; driveway to front and garden to rear. By reference to the Lease the site extends to an area of approximately 225 square yards with a frontage of 24 feet.

THE HEARING

Mr Joe Moore BSC of Midland Valuations Limited appeared on behalf of the Lessees, Mr and Mrs B Perfitt.

Mr Zulfikar Ali represented himself.

PRELIMINARY ISSUE

During questioning by Mr Ali it became apparent there was a dispute between the parties as to the effective date of service of the Notice. Mr Moore explained to the Tribunal that the Notice was dated 15th November 2001 and had been served by Recorded Delivery on Mr Ali's Agent, Property Seekers, who have refused to accept it. Personal delivery was attempted by Mr Moore on the 17th December 2001 and 10th January 2002 but Mr Ali's Agents, Property Seekers, refused to accept the letter. The Notice was finally served by Mr Paul Rockey acting as Agent for Mr Moore on the 18th March 2002.

The Tribunal are asked to rule upon the effective date of service.

1. The Tribunal find as a matter of fact that on the 15th November 2001, the 17th December 2001 and the 10th January 2002 the Notice was not left at the premises of Mr Ali's Agent.

2 The Tribunal further find that whilst the Notice itself is addressed to the Landlord correctly, the envelope in which it was enclosed was merely addressed to his Agent, Property Seekers. The Tribunal therefore finds that the delivery on 15th November 2001 was fatally flawed.

3 The Tribunal, however, find as a matter of fact that the Notice was delivered and left at the premises of Property Seekers on the 18th March 2002 and that both parties are in agreement upon this point.

The Tribunal therefore determines that the effective date of service is the 18th March 2002 and this becomes the Valuation Date at which time there were approximately 56 years unexpired on the Lease.

THE MAIN ISSUE

The Tribunal declined to determine the Preliminary Issue before the main hearing and the parties were asked to present their valuations based on either 15th November 2001 or the 18th March 2002. In the light of the Tribunal's determination, only the evidence relating to the 18th March 2002 valuation is summarised below.

The Tribunal established that the issues between the parties was the capital value and the date of valuation.

Mr Moore contended that the value on the 18th March 2002 was £97,500. In evidence he referred to the contract for the sale of the leasehold interest in Number 19 Berwick Grove dated the 16th October 2001 at a price of £93,500.

His valuation (amended by the Tribunal in light of the changed valuation date and entirety value) is set out below:

MR MOORE'S VALUATION

TERM

Annual Ground Rent	£17.50	
YP 56 years@ 7%	£13.9626	£237.36

Reversion

Entirety value	£97,500	
Site Value @33%	£32,175	
Section 15Rent @ 7%	£2,252.25	
YP Perpetuity deferred		
56 years @ 7%	£0.32315	£727.81
		<hr/> £965.17

In support of the various elements of Mr Moore's valuation, Mr Moore said that the yield rate of 7% for the term was generally accepted by valuers acting for both leaseholders and freeholders.

With regard to site value apportionment, Mr Moore had settled at 33% based on a number of recent Tribunal decisions and in particular he referred to the following:

M/EH2423c (23 Hayworth Close Coton Green): a semi-detached house with a plot frontage of 26.5 feet and a site area of 270 square yards.

M/EH2349c (8 Hayworth Close, Coton Green): a semi-detached house with a plot frontage of 26 feet and a site area of 260 square yards.

M/EH2342c (54 Claremont Rd, Coton Green): a semi-detached house with a plot frontage of 25 feet and a site area of 285 square yards.

M/EH2320c (30 Brabham Crescent, Streetly): a semi-detached house with a plot frontage of 25 feet and a site area of 275 square yards.

With regard to the reversion Mr Moore said that the Midland LVT had been consistent in the use of 7% reversionary yield for all but very short Leases. He did not consider that a Lease with a 56 year unexpired term should be regarded sufficiently short to vary the rate.

Mr Ali put forward the view that the entirety value should not be £97,500 but £115,000. Although he had no evidence in support of this figure, he pointed out that the sale of No 19 Berwick Grove was on a leasehold basis.

He further advised the Tribunal that he had purchased the freehold interests in No 19 and 22 Berwick Grove for the sum of £2,000 each and that No 19 had been sold for £1,400 and that he would agree to this figure in respect of the subject property.

THE DECISION

A Determination of Price

- 1 The Tribunal determined the valuation date as the 18th March 2002,
- 2 The only area of the valuation disputed by Mr Ali was the entirety value and contended for £115,000 and Mr Moore contended for £97,500. Mr Ali has no evidence to support his valuation. Mr Moore’s evidence is limited to the sale of a similar but leasehold property some four months previously.
The Tribunal therefore attach limited weight to the evidence of both parties and bearing in mind the steadily rising market, determine using their knowledge (but not any special knowledge) and experience in the evaluation of the evidence produced that the entirety value is £100,000.

THE TRIBUNAL’S VALUATION

TERM

Annual Ground Rent	£17.50	
YP 56 years@ 7%	£13.9626	£237.36

Reversion

Entirety value	£100,000	
Site Value @33%	£33,000	
Section 15Rent @ 7%	£2.310	
YP Perpetuity deferred 56 years @ 7%	£0.32315	£746.48
		£983.84
	say	£985.00

B Determination of Costs

Section 9 (4) of the Act provides as follows:

“Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:

- (a) any investigation by the landlord of that person’s right to acquire the freehold;

- (b) *any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;*
- (c) *deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;*
- (d) *making out and furnishing such abstracts and copies as the person giving the notice may require;*
- (e) *any valuation of the house and premises:*
but so that this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void”

Para 5 of Part 1 of Schedule 22 to the Housing Act 1980 provides that:

“the costs which a person may be required (to bear) under section 9(4)... of the 1967 Act... do not include costs incurred by a landlord in connection with a reference to a leasehold valuation tribunal”

Mr Moore contended as follows:

Legal fees. He submitted a figure of £225 (plus VAT) in line with a number of recent Panel Decisions as follows:

M/LRC385 – 23 Hayworth Close, Coton Green, Tamworth
M/LRC372 – 12 Claremont Road, Coton Green, Tamworth
M/LRC296 – 60 Brabham Crescent, Streetly, Sutton Coldfield
M.LRC320 – 54 Claremont Road, Coton Green, Tamworth

The freehold title of the subject property is known to be registered and office copies were submitted in evidence. Mr Moore indicated that the Tribunal had begun to make a distinction between when determining conveyancing costs between “transfer of the whole” and a “transfer of part” the point being that transfer of the whole is considerably more straightforward. In this case there is only one single entry on the freehold title and this he believes supports the case for a fee of £225.

With regard to Valuation Fees, Mr Moore advised that no valuation of the reversionary interest or correspondence concerning the valuation was received from the freeholder or any Agent at the time of the tenant’s Application to the Tribunal on the 20th May 2002. The lessee advised that no internal inspection of the property was made prior to the date of the Application. The freeholder’s request to adjourn the hearing in order that a surveyor and solicitor could be instructed would appear to support this contention.

Paragraph 5 Part 1 Schedule 22 of the Housing Act 1980 provides that costs incurred by the landlord should not be borne by the enfranchising lessee if those costs are incurred following reference of the matter in question to a Leasehold Valuation Tribunal. Accordingly, Mr Moore submits that the lessees are not liable for any such valuation fees.

Mr Ali contended that the valuation and the legal costs of transfer should be £275 plus VAT, as in the case of the undisputed charges in respect of No 19 Berwick Grove. Mr Ali went on to say that he had no specific evidence, but he had obtained quotes for the transfer and the firm who acted for him in the sale of No 19 had agreed to deal with the sale of No 22 for the same cost i.e. £275 plus VAT and disbursements (Land Registry fee and office copy entries). He accepted that no valuation had been undertaken.

THE DETERMINATION

1 Determination of Price

We determine that with the benefit of our inspection and the use of our knowledge (but not any special knowledge) and experience in evaluation of evidence produced, that the sum to be paid for the freehold interest in the above described property in accordance with Section 9 (1) of the Leasehold Reform Act 1967 (as amended) is Nine hundred and eighty five pounds (£985)

2 Determination of Costs

We award costs in accordance with section 9(4) of the Leasehold Reform Act 1967 and Paragraph 5 of Part 1 of Schedule 22 of the Housing Act 1980 as follows:

- A Legal costs £250 plus VAT (if applicable) and proper disbursements in connection with Land Registry fees and office copy entries
- B Surveyors fees Nil

Signed Robert T Brown

Robert T Brown FRICS
Chairman

28 OCT 2002